Bethlehem Steel Corporation *and* Freda J. Kirkman.
Case 25-CA-12429

June 15, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 28, 1981, Administrative Law Judge Lowell Goerlich issued the attached Decision in this proceeding. Thereafter, the General Counsel filed limited exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Bethlehem Steel Corporation, Burns Harbor, Chesterton, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] Consistent with the position taken by the Board in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), Member Hunter would issue a narrow "in any like or related manner" order in this proceeding.

DECISION

STATEMENT OF THE CASE

LOWELL GOERLICH, Administrative Law Judge: The original charge was filed by Freda J. Kirkman on July 21, 1980, and was served on Bethlehem Steel Corporation, herein referred to as Respondent, by certified mail on or about the same date. A complaint and notice of hearing was issued on September 30, 1980. The complaint alleges, among other things, that Respondent unlawfully discharged Freda J. Kirkman, its employee, on or about July 10, 1980, in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, herein referred to as the Act.

Respondent filed a timely answer denying that it had engaged or was engaging in the unfair labor practices alleged.

The case came on for hearing in Portage, Indiana, on April 22-24 and June 2, 3, 4, 9, 10, 11, 12, 16, and 17, 1981. Each party was afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, to argue orally on the record,[1] to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.[2]

FINDINGS OF FACT,[3] CONCLUSIONS, AND REASONS THEREFOR

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware.

At all times material herein, Respondent has maintained its principal offices and places of business in Bethlehem, Pennsylvania, and other plants located in several States of the United States, including a plant in Burns Harbor, Chesterton, Indiana, herein referred to as the facility, and is, and has been at all times material herein, engaged at said facility in the production and distribution of steel and related products.

During the 12-month period ending December 31, 1979, Respondent, in the course and conduct of its business operations described above, sold and shipped from the facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Indiana.

During the 12-month period ending December 31, 1979, Respondent, in the course and conduct of its business operations described above, purchased and received at the facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Indiana.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Steelworkers of America, AFL-CIO, herein referred to as the Union, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Preliminary Determinations*

First: In its brief Respondent has moved to strike the entire testimony of Kirkman because at the hearing the Administrative Law Judge did not respond affirmatively

[1] There being no opposition thereto, Respondent's motion to amend the transcript is granted, and the transcript is amended accordingly.

[2] Respondent's counsel filed a 103-page brief in which the issues herein were exceptionally well elucidated.

[3] The facts found herein are based on the record as a whole and my observation of the witnesses. The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *N.L.R.B.* v. *Walton Manufacturing Company & Loganville Pants Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with the testimony of credible witnesses, or because it was in and of itself incredible and unworthy of belief. All testimony has been reviewed and weighed in the light of the entire record. No testimony has been pretermitted.

to the following statement of Respondent's counsel: "I would urge Your Honor to also admonish Mr. Fisher under that rule[4] that he is not allowed to consult with Ms. Kirkman about her testimony today or tomorrow."

The Administrative Law Judge's response likened the relationship between Kirkman and counsel for the General Counsel to that between lawyer and client. The Administrative Law Judge then said:

> And I will not restrict him [counsel for the General Counsel].
>
> However, that doesn't mean when Ms. Kirkman takes the stand tomorrow and you have her on [cross-examination] you can't ask her whether she conferred with Mr. Fisher about her testimony that she gave [heretofore] and inquire as to what they discussed and whether or not Mr. Fisher indicated to her what her testimony should be. This is the type of question lawyers many times ask and I think that will adquately protect you.
>
> * * * * *
>
> MS. KAPLAN: For my edification does that apply to the people I am representing?
>
> JUDGE GOERLICH: Any person who is in this courtroom that is your client, I will allow you at any time to confer with him.
>
> * * * * *
>
> I would suggest to Mr. Fisher he not cause us any problems with regard to what Ms. Kirkman is being interrogated on or any advice you might give her between now and tomorrow morning although I recognize there might be something you need to talk to her about.

On April 23, the date the above remarks were made, the matter was recessed until April 24 at 9 a.m., at which time Kirkman's direct examination continued. Thereafter, Respondent's counsel commenced cross-examination. Kirkman, at the beginning of her cross-examination, was asked whether she had conferred with Attorney Fisher during the evening recess. She answered, "No." At the close of the day's testimony the Administrative Law Judge directed these remarks to Kirkman:

> JUDGE GOERLICH: You can talk to him or anyone you want about any subject but I do not want you to talk about any testimony you give in this proceeding or expect to give with any person except Mr. Fisher. And Mr. Fisher will, of course, exercise his judgment as to what he thinks, what is necessary to discuss with you to properly represent the Government. That's what I had in mind.

At the end of the day recess was taken to June 2, 1981.

When the case reconvened on June 2, 1981, Kirkman was questioned very carefully by Respondent's counsel and the Administrative Law Judge with regard to any discussion with Attorney Fisher. Kirkman candidly and frankly disclosed that she had talked to Attorney Fisher with regard to unemployment compensation transcripts and documents from the Indiana Civil Rights Commission. Apparently, what was discussed with Attorney Fisher was the difference in witnesses' testimony appearing in the civil rights paper and the unemployment compensation transcript. Kirkman testified that Attorney Fisher "didn't review anything with regard to what she might have said last time and what is down there."

In the case of *Geders* v. *United States*, 425 U.S. 80 (1975), Chief Justice Burger wrote for the Court at 89–91:

> There are other ways to deal with the problem of possible improper influence on testimony or "coaching" of a witness short of putting a barrier between client and counsel for so long a period as 17 hours. The opposing counsel in the adversary system is not without weapons to cope with "coached" witnesses. A prosecutor may cross-examine a defendant as to the extent of any "coaching" during a recess, subject, of course, to the control of the court. Skillful cross-examination could develop a record which the prosecutor in closing argument might well exploit by raising questions as to the defendant's credibility, if it developed that defense counsel had in fact coached the witness as to how to respond on the remaining direct examination and on cross-examination. . . .
>
> There are a variety of ways to further the purpose served by sequestration without placing a sustained barrier to communication between a defendant and his lawyer.

While the *Geders* case is not on all fours with the instant case, its comparability is enough to provide a guide for the matter which is before me. Fair play and the salutary propagation of a lawyer-client like relationship with the protections it entails seem to indicate that a charging party discriminatee, who is the instigator of the complaint which the General Counsel is pursuing and is unlearned in the law and wholly relying on the General Counsel for the presentation of his or her claim, ought to be permitted to confer with him during recesses even though he or she is on the stand. Obviously, Kirkman lacked both the skill and knowledge adequately to present her own claims. She, as was noted in the *Geders* case, "requir[ed] the guiding hand of counsel at every step." There appears to have been no prejudice to Respondent. Respondent's motion is denied.

Nevertheless, in evaluating Kirkman's credibility, I have carefully weighed the fact that she did confer with Attorney Fisher during the recess when she was not yet excused from the witness stand.

Second: Respondent submits that the Administrative Law Judge erred in admitting into evidence General Counsel's Exhibit 10 (the decision of the Indiana Employment Security Division (IESD) with respect to

[4] Counsel for Respondent cited a rule that "once a witness is under oath their counsel is not allowed to confer with them during recess, during a break, or anything of that nature."

Kirkman's claim for unemployment compensation, by the deputy, dated September 10, 1980); General Counsel's Exhibit 11 (the decision of the IESD appeals referee regarding Kirkman's claim dated October 31, 1980); General Counsel's Exhibit 12 (the statement of Respondent dated August 20, 1980, submitted to the IESD in reference to Freda J. Kirkman's claim); General Counsel's Exhibit 17 (the IESD letter of May 8, 1981, with enclosures of the above-mentioned documents as well as the following: An eligibility information report dated July 29, 1980, signed by J. F. Bowman, Respondent's supervisor of employment; Kirkman's attendance records (Emp. Exhs. A and B); Respondent's handbook setting out the progressive discipline rule for "Poor Work"; Respondent's departmental policies concerning absenteeism and lateness; Kirkman's discharge telegram; Respondent's letter of July 31, 1980, stating the cause for Kirkman's discharge; and the affidavits of Clarence M. Newman with regard to the "pool incident," discussed *infra* (the latter four items were claimant's exhibits)); General Counsel's Exhibit 18(c) (transcript of the tape made at the hearing before the appeals referee on Kirkman's claim on October 14, 1980); and General Counsel's Exhibit 21 (some of the papers filed with the Indiana Civil Rights Commission in reference to Kirkman's claim).

General Counsel's Exhibit 10: This exhibit is excluded because it is not the final decision of the IESD.

General Counsel's Exhibit 11: In reversing the Administrative Law Judge's refusal to admit into evidence "copies of decisions made by a referee of the Pennsylvania Bureau of Unemployment Security," the Board stated: "The decision of a state unemployment compensation agency may be judicially noticed." *Duquesne Electric and Manufacturing Company*, 212 NLRB 142, fn. 1 (1974). While I have admitted the decision of the appeals referee, nevertheless, my decision would have been the same had that decision not been offered and admitted.

General Counsel's Exhibit 12: Respondent's counsel admitted the authenticity of this exhibit. The exhibit relates the reasons Respondent discharged Kirkman. Respondent's objection that "[i]t is not Mr. Shaefer's analysis" is without merit. The statement obviously was intended to state Respondent's reasons for Kirkman's discharge. Being material, the exhibit is admissible.

General Counsel's Exhibit 17: That part of General Counsel's Exhibit 17 which is the same as General Counsel's Exhibit 10 is excluded. Respondent did not object to the authenticity of any parts of General Counsel's Exhibit 17.

General Counsel's Exhibit 18(c): This exhibit is the testimony taken before the appeals referee. While the entire exhibit was admitted at the hearing, I have only considered the parts which are material. My decision reflects those parts.

General Counsel's Exhibit 21: I shall reject this exhibit as either being immaterial or cumulative.

B. *Clarence M. Newman*

1. Background

Clarence M. Newman had finished college early and in the first part of 1977 was given a job by Respondent at its Burns Harbor plant as an interim looper prior to the formal class for loopers. Thereafter, during July 1977, he attended the formal class that Respondent conducted for loopers. He returned to the Burns Harbor plant and commenced a management training program. In July 1979 he was promoted to a supervisory position and assigned to the "Cost Analysis Division" where he worked until he was discharged on August 5, 1980.

According to Harvey Shaefer, plant comptroller, Newman was a constant problem while he worked for Respondent. Shaefer described him as immature and very arrogant, and related that, "at one time in the Cost Division, [Newman] was written up for arrogantly standing up in the office and openly proclaiming that if Mr. Shaefer wanted to talk to [him], he['d] have to come to [his] desk."

When Newman was promoted in July 1979, Shaefer reviewed all of the past problems with him, "his hostile attitude, his insubordination [and] his immaturity." Newman "promised . . . [to] turn around and do a good job." Thereafter, his attitude and work performance deteriorated. In December 1979 Newman was rated unsatisfactory. In May 1980 Shaefer warned him that, if Shaefer did not see an immediate improvement in his work and his attitude, he would be subject to discharge. Shaefer testified, "He was very hostile at that meeting. The results are obvious, that he did not improve and on August 5, 1980, he was discharged."

Newman's response was to file a complaint with the Indiana Civil Rights Commission which is still pending. Newman felt that he had been unfairly treated and discriminated against "[o]n the basis of [his] race."

Prior to his discharge, after 8 months of employment with Respondent, Newman wrote a letter to Respondent's chairman of the board entitled "It's Only a Suggestion" concerning the accounting department, which was under the supervision of Shaefer. In the letter Newman criticized some of the accounting department procedures and offered suggestions. The letter was forwarded to Shaefer. Among other things, Newman wrote, "In case you didn't realize I am black. Before black never meant anything, but presently I feel isolated because of it. After going to an all white public school and college, I cannot believe bigotry is still an overwhelming popularity."

Several months after his discharge, on November 17, 1980, Newman sent a postcard to Sally K. Brandau, assistant chief of accounts payable. On its face appeared the picture of a white female with her tongue sticking out in a defiant, rude manner. Newman, in a written message on the card, referred to the picture as a "stunning self portrait" of Brandau. Among other things, the message revealed, "[T]his picture adequately details all the feelings I've wanted to say, but couldn't under the circumstances." It was signed, "Love Clarence M. Newman."

2. The pool incident

On July 10, 1980, a number of the exempt employees in the accounting department attended an outing at the Sand Creek Management Club near Portage, Indiana. Among those present who testified in this proceeding

were Newman, Brandau, Fern Judith Rushing, office manager, Jeneane Ray Duval, section head in the plate mill billing division, and Judith Louise Pierce, supervisor of accounts payable. Pierce was alleged discriminatee Kirkman's immediate supervisor. Brandau was over Pierce. Each to some extent had participated in Kirkman's discharge and knew that Kirkman had been discharged on July 9, 1980, the day before the outing, effective July 10, 1980.

Newman arrived at the club somewhere shortly after 12:15 p.m. He dived into the pool and swam toward where Pierce and Brandau, who had arrived about 12:30 p.m., were sitting in lounge chairs on the pool's apron. Newman "came up and was waving [his] feet in the water. [He] was resting from swimming." He heard Brandau say to Pierce, "That's why I fired her. . . . The union is due to come back for another vote. I will not have the situation that arose in my department last year happen again. I hate Freda. She is an obnoxious person and I will not tolerate any employee who tries to force the union into my department." Newman was 10 or 20 feet from Brandau and Pierce.

Kirkman had been notified of her discharge by telegram, which she did not receive until she returned from her vacation on July 17, 1980. Thereafter, sometime before August 5, 1980[5] (the date is unclear in the record), Kirkman learned from Newman about the pool incident. Newman also revealed to several employees that Kirkman had been discharged for union activities.[6]

On August 5, the date of Newman's discharge, Kirkman informed Newman that she was meeting with a Board agent at her home. She invited him to come there and speak with the Board agent. Newman went and talked to the Board agent. During the conversation the Board agent asked Newman whether he had "heard any company official say that Ms. Kirkman was fired for union activities." Newman, who by then had already been fired, testified that he responded, "At that time I told him no. At the time I told him no I didn't want to get involved not knowing where I was going to go."

Newman further testified, "I was worried about my own life at that time. I really didn't think about Freda. I was just there finding out where I was going to go, what I was going to do." Newman added, "I had gotten fired. I wasn't concerned about my job but I was concerned about my whereabouts, what I was going to do. I knew at the time I would be looking for another job. If you are going to, you are giving statements about company employees, you are looking for a company job, who is going to hire you?"

Thereafter, Newman "did some talking with [his] parents" and "[t]hey suggested that [he] go ahead with it and they supported [him]." Newman sent a statement detailing the pool incident to Kirkman, who transmitted it to the Board agent. On September 21, 1980, Newman gave an affidavit to a Board agent in Philadelphia, Pennsylvania, in which the pool incident was described. Although Kirkman submitted many written statements to the Board, none contained reference to the pool incident.

Respondent offered the testimony of Rushing, Duval, Brandau, and Pierce to rebut Newman's testimony. Apparently, the testimony of Rushing and Duval was offered to establish that the Brandau-Pierce comments could not have occurred in the time period related by Newman. However, the evidence is not that Brandau and Pierce were under the constant surveillance of either Rushing or Duval at all times they were at the pool. In fact, Rushing testified that she observed Brandau and Pierce "alone at the poolside." Moreover, according to Rushing and Duval, when each arrived at the pool, Pierce, Brandau, and Newman were already there. Duval, when she first arrived, saw Newman "sitting on the edge of the pool . . . dangling his feet," and saw Brandau and Pierce, in swimsuits, "sitting up near the snack bar area."

Both Brandau and Pierce denied that the remarks concerning Kirkman's discharge had been uttered by Brandau. Brandau testified that when she arrived she did not see Newman "around." Pierce testified that when she first arrived at poolside she did not "notice" where Newman was.

Brandau and Pierce had arrived at the Sand Creek Management Club in each other's company. There were no others with them.

3. Credibility

The question of credibility is an important consideration in this case and has caused me considerable concern. In resolving the credibility issues, I have reviewed the entire record with great care, compared the testimony of the diverse witnesses and returned to my mind's eye the demeanor of each witness as each testified on the witness stand, carefully evaluated Respondent's credibility arguments contained in its brief, and have additionally analyzed the testimony as it relates to the reasonableness of my conclusions. I have concluded that Shaefer was an unreliable witness who appeared to be the orchestrator of Respondent's defense in this case. Among other things, his comportment on the witness stand and his use of supererogatory answers have convinced me that he was untruthful about material matters in this case. Lowell Thomas Gillikin, chief of accounts payable, Brandau, and Pierce were apt students of Shaefer's subreptions and reflected Respondent's self-interest in these proceedings.

I do not believe that Kirkman engaged in any deliberate lying. She was for the most part a credible witness who stuck to the truth in respect to the important facts in this proceeding. Indeed, her credibility was enhanced by the careful, perceptive, and in-depth cross-examination conducted by Respondent's learned counsel.

Newman's credibility will be considered hereafter.

C. *Freda J. Kirkman*

Freda J. Kirkman was hired on March 16, 1970. Her last day worked was July 2, 1980. On that date she had commenced her vacation. During her vacation period, a telegram was transmitted to her on July 9, 1980, in

[5] August 5, 1980, was the date on which Newman was discharged.

[6] Employee John Traeger testified that, while he, Newman, and other employees were eating lunch between 1 and 2 months before Newman was fired, Newman stated that he knew why Freda was fired and that it was in regards to her union activities.

which she was informed that "DUE TO YOUR PAST RECORD YOU ARE BEING DISCHARGED EFFECTIVE 7-10-80." Shaefer's name appeared as the sender of the telegram. At a hearing before the IESD on October 4, 1980, concerning Kirkman's unemployment compensation claim, Gillikin, chief of accounts payable, testified that it was not "standard procedure" to discharge an employee while he or she was on vacation.

After Kirkman had returned from her vacation and received the telegram, she addressed a letter to Shaefer, plant comptroller, requesting "a written statement from H. W. Shaver [sic] naming each person and their reason, which were instrumental in my being discharged." On July 31, 1980, Shaefer replied, "[Y]ou were discharged due to your Marginal Performance Record."

At the IESD hearing held on October 14, 1980, Gillikin testified that Kirkman was discharged "[b]ecause of her record; her past record; attendance; work record; both." Gillikin stated, "[S]he's an employee who has continually had an absenteeism problem and each time she takes off we insist that she brings [sic] in a doctor's excuse." Gillikin said that her work performance was unsatisfactory, testifying: "Well I have her last performance appraisal here. She was marginal on the quantity of work, dependability she was marginal, job attitude we felt was marginal, effectiveness working with other people was marginal. . . . The other clerks, I have the averages here for the other clerks who were processing invoices. Her average was 34 per day. There are five other ones. They averaged 56, 58, 45, 44 and 45, and her average was 34."[7] Gillikin added that she was "unable to get along with the other people working in the mill offices. . . . [H]er lateness was also a problem." When Gillikin was asked why Respondent did not follow its own rules in this case with regard to graduated penalties, Gillikin responded, "Because this person we felt had such an overall record of being undependable, and her job attitude and effectiveness working with other people, we discharged her without following these rules." Gillikin admitted that Kirkman's tardiness was "pretty well cleaned . . . up in '79 and '80." Gillikin was unable to name any individuals Kirkman "couldn't get along with."

Gillikin's testimony before the IESD makes no reference to Respondent's claim in this proceeding that Kirkman was chosen as a dischargee because of a permanent reduction in force.[8]

On an eligibility information report for the IESD dated July 29, 1980, Respondent reported, "Claimant was discharged because of poor work, poor attitude, and insubordination." When asked to explain the foregoing, Respondent replied on August 20, 1980:

> Claimant's output of work did not fully meet the requirements of the job. She would only maintain a satisfactory level of output when under close supervision. Employee also could not be counted on to carry out instructions and fulfill the responsibilities of the job without close supervision. In addition to claimant not performing up to standards unless closely supervised, she had problem[s] getting along with other employees. Claimant was insubordinate in an incident where she ignored her supervisors instructions about taking care of non-work related matters when she should have been working.

As noted above, Kirkman was hired on March 16, 1970. She commenced her duties as a file clerk and remained in that position until she was assigned to the microfiche machine as a vendor code clerk in 1976. According to Brandau, assistant chief of accounts payable for whom Kirkman worked, a file clerk "receives purchase orders and receiving reports and locks up the number and files them in order. Purchase orders—receiving reports and the purchase orders are filed by looking at the number . . . . In an open file, its a—rows, shelving, and they're filed in sequence." Brandau described Kirkman as being "efficient" and "a stickler for details"; however, Brandau testified that she had "numerous complaints in relation to her conversations with other mill locations." Employee Carol Orr complained that Kirkman was "snippy and uncooperative." Employee Jim Kane reported that Kirkman "threatened to throw his work in the waste basket." Brandau also had complaints from Bob Rogers, Steve LaCocci, and Bernice Rogula. Rogers' complaint was that Kirkman was uncooperative, "snotty, and nasty." According to Brandau, she mentioned these matters to Kirkman pointing out that "she could get more with sugar than vinegar, she should talk to these people in a manner she would like to be spoken to." In regard to employee Jim Kane, Kirkman, when addressed by Brandau, said, "Well, he was giving me a bad time." These events occurred in 1974, 1975, or 1976.

Brandau "weighed [Kirkman] with regard to her performance" as a file clerk as follows: "She was very accurate. I mean very seldom did I ever find a mistake on Freda but she was very slow also."

While a file clerk, Kirkman's attendance problems came to Brandau's attention. On this subject Brandau testified:

> The problem that she wasn't there and somebody had to fulfill her job. She also had a problem which she was written up for, inability to call in. She would not call in. I believe in her record there are six different incidents. One time I gave her a writeup about it and I tried to tell her her responsibilities for the job, she would have to report [being] off because we would have to have somebody to cover. She told me one time her father was trying to get her fired, he was supposed to call the office and didn't, he was trying to get her fired. That was her excuse.

In 1971 Kirkman was placed on attendance restriction, which required her to bring a doctor's excuse for absences due to illness. Employees with an excessive amount of sick time were placed on such restriction.

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[7] Sheryl Echterling, who was rated as a marginal employee and who was discharged on the same day as Kirkman, averaged 49.66 invoices a day for the period from October to July. During this period Echterling reached the highest daily average for a month, 62, in May 1980.

[8] In its brief Respondent asserts that Kirkman was "terminated on July 10, 1980, as a result of a force reduction in the Accounting Department."

Until she was discharged, Kirkman remained on this restriction.

On August 10, 1976, Kirkman was given her first performance appraisal by Brandau. At the time Kirkman was a file clerk. She was rated as satisfactory with the remark, "[M]akes very few mistakes—[d]oes not get along well with people from [p]urchasing or the mill." On the appraisal "Satisfactory" was defined as "Good performance. Meets the job requirements." Reviewing Supervisor Gillikin's comments were, "Employee will be given chance to learn other jobs."[9]

Around the first of October 1977 Kirkman was assigned to the microfiche[10] machine as a vendor code clerk. A microfiche machine has the appearance of about a 15-inch television screen.

To each voucher received by Respondent is attached a paper form entitled "Accounts Payable and Distribution Data for Keypunching." The vendor code clerk places the voucher number on the form. The number is obtained by inserting a microfiche card (cellophane-like tape) in the lower portion of the machine where a slot for such purpose is provided. Upon insertion of the card the vendor's name and code number appear on the microfiche screen. This number is then written on the voucher by the vendor code clerk. Approximately 500 vouchers are processed daily in this manner by the vendor code clerk.

On November 29, 1977, Brandau again prepared a performance appraisal on Kirkman. Except for 2 months it covered Kirkman's employment as a file clerk. In the appraisal Kirkman was rated as marginal. Kirkman was described as slow to learn, bad attitude at times—is a nervous person. Brandau commented, among other things, "Employee has recently been moved to a different job—seems to be doing better working by herself . . . . Employee wants to improve—has a lot of personal problems—likes her new job." Gillikin, the reviewing supervisor, added, "[A] problem with tardiness affects [employee's] job performance." Kirkman had been given verbal and written warnings for tardiness. Brandau testified that during the 1977 appraisal period the quality of Kirkman's work was satisfactory; she made few mistakes. She was "slow" and "her attitude had gone down." "People were complaining to [Brandau] about what [Kirkman] was doing." At the time of the appraisal, according to Brandau, Kirkman revealed that she was having "marital problems." In regard to her personal problems Brandau told Kirkman that if she had something Brandau could help her with Brandau would be glad to help.

Kirkman testified that she was not told in 1977 that her performance was marginal. Referring to the performance appraisal, Kirkman testified, "Sally told me I was very conscientious. We had our performance appraisals, her and I just more or less talked like friends. I have never seen one. I have never seen a performance appraisal."

Brandau testified that she prepared a performance appraisal for Kirkman in 1978; however, this appraisal could not be located.[11] Brandau claimed that at that time she had ratedKirkman as marginal. Brandau asserted that Kirkman "wasn't producing." However, Brandau testified that "[t]o look up a vendor code, put the purchase on . . . [took a] minute." Kirkman testified that she processed 500 vouchers a day, which amounted to a little less than 1 minute per invoice.[12] Kirkman, while on the microfiche, was never criticized for being behind in her work.

In March 1979 Kirkman began working for the Union, which was seeking an election in a unit of nonexempt clerical and professional employees. At the time she was employed on the microfiche. She was a very active union partisan and a button wearer. She kept union literature for distribution on her desk. These facts were known to Respondent's supervisors, Shaefer, Gillikin, Brandau, and Pierce. Kirkman's union activities continued throughout the union election campaign, which culminated in an election held on June 28, 1979. Around 1,000 employees participated. Kirkman was an alternate union observer. Around 208 of these employees were under the supervision of Shaefer.

Concerning Kirkman's union activities, Respondent's witness, Donald R. Coffey, a senior buyer, testified, "If you passed Freda in the hall, she wasn't backward about it, she wore her buttons, and passed out her literature and so on."

A picture was taken of Kirkman as she distributed union literature at Respondent's parking lot on June 28, 1979.

Richard L. Shover, Respondent's superintendent of labor relations, testified that Respondent opposed the Union's representation attempt. Shover described the practice followed by Respondent in this case as follows:

> The company does conduct a very thorough and we feel vigorous campaign to get our side of the story, the employer's side of the story, in front of the employees who are going to have to make that choice.
>
> Ordinarily most of the time a campaign will take about two months, from the time we get a petition until the time of the election takes place is usually about two months. During that two-month period we will send letters to the homes of the employees who will be involved in the unit. We send flyers. We usually have two different occasions where we

[9] Brandau testified that she marked Kirkman marginal with regard to dependability because "[s]he had an absenteeism problem. She did not call in. She had a lateness problem. And I could not depend on her to be there to do the job." As to attitude, Brandau rated Kirkman as satisfactory because, as stated by Brandau, "Whenever I would go back she was very cooperative with me. I asked if she liked her job. I knew she liked her job."

[10] A microfiche is defined as a "sheet of microfilm, usually measuring four by six inches, capable of accommodating and preserving a considerable number of pages in reduced form."

[11] According to the performance appraisals offered by Respondent, the period of the 1977 appraisal was from August 1976 to August 1977 and the period of the 1980 appraisal was from November 1977 to November 1979. Thus, any intervening appraisal would have covered the 3 months from August to November 1977. To give an appraisal for 3 months did not fit in with Respondent's practice. Shaefer testified that appraisals were "supposed to be done approximately one year apart."

[12] Had she worked a full 8-hour day without breaks she would have consumed 480 minutes.

> will take employees off the job and take them into another, an office, a meeting room, or an auditorium and hold meetings with them to present to them information which we feel they should have in order to make a considered judgment. . . .
>
> We feel it worthwhile for them to be reminded of the benefits which they enjoy at that time provided by Bethlehem Steel Corporation without the benefit of a union representative; to provide to them some of the things that through the years we have learned organizers will tell employees which we feel is not altogether accurate; we remind them how an election is held and certainly how important it is.

Pursuant to this practice Respondent held four employee meetings on June 6, 1979, five meetings on June 7, 1979, and five meetings on June 8, 1979, in the auditorium. The meetings were around 45 minutes long. About 135 employees attended each meeting. Meetings were also held by superintendents with their various departments on June 25 and 26, 1979. Shaefer and Charles M. Steeves, assistant plant comptroller, held 12 such meetings in the accounting department's conference room. Attending each meeting were 12 to 18 employees. Present also was an industrial relations attorney from the home office. Kirkman attended the meeting of June 26; 14 employees were present.

After one meeting Kirkman talked to George Dellinjer, administrative assistant to the manager of the steel mill. Dellinjer, addressing Kirkman, said that he could not "figure out why [she] was back[ing] the union." Kirkman responded, "No one would change what I felt about the union, I'm strictly union."

After a meeting in the conference room Kirkman conversed with Steeves, and, among other things, told him that "Bethlehem Steel was run more by favoritism and pets." Kirkman also asked questions at the meetings she attended. Steeves remembered saying to Kirkman, "I didn't see in my opinion why she wanted a union or why she felt she needed one."

Kirkman testified that about 2 weeks after the union drive commenced Gillikin called her to Brandau's office. Gillikin said, "I heard you were working for the union." Kirkman answered, "Yes, I am," whereupon Gillikin told her to "[g]o out there and keep your big mouth shut." While Gillikin testified that on one occasion he called Kirkman in his office to discuss an argument with a fellow worker, he related that his exact words were "all we expect you to do, Freda, is to sit at your desk, do your job, and keep quiet."

Offered into evidence was a report dated April 3, 1979, filed by Gillikin. The report described an incident in which Kirkman approached another employee, D. E. Richardson, and tried to persuade him to sign a union card. Kirkman was called to the office and told that "soliciting for union membership during working hours or at a work area is not allowed." The report continued:

> A short time later as I walked past her desk, she made a loud announcement that she would be in the cafeteria at lunch time to collect any union cards that anyone wanted to turn in. I stopped at her desk and told her again that soliciting for union membership is not allowed at her work area. She said in a very loud voice, "All I said is that I will be in the cafeteria at lunch time to collect any union cards anyone wants to turn in."
>
> Since the plants comptroller had instructed me to give her a verbal warning for the above incident with D. E. Richardson I felt this announcement was an act of insubordination, however, I was instructed by the asst. plant comptroller to just keep a close watch on the employee and report any further incidences.

After the union drive commenced, Brandau, rather than laying vouchers on Kirkman's desk, would "throw them on the desk."

Several weeks before the election Brandau told Kirkman that "she was going to fix it where [Kirkman] would have a nervous breakdown or she would see that [Kirkman] got fired." Brandau added, "See what good the union would do [her], see if they could help her, see how great the union is."[13]

Apparently, Brandau was making it difficult for Kirkman because Kirkman testified that 1 week before the election she went to Shaefer's office, on which occasion she was crying, and that "Judy Rushing did go out and get me a Kleenex." Kirkman told Shaefer:

> I told him that I had missed one day's work. Sally told me to come back to work and get a doctor's statement. When I went back to work, I was on the phone one day trying to get the doctor's statement and I told Sally that I couldn't get it, that I couldn't get an appointment.
>
> Sally was right behind me at my desk, and she told me, "It doesn't matter whether you get that statement or not. You're not getting your pay."
>
> Things just kept going on and on. . . .
>
> He said—I told him everything that had been going on, he told me it wasn't fair that anyone had to work under these conditions. He would call Tom and Sally in and he would talk to them.

The Union lost the election. There has been no union organizational effort since.

In October 1979 Kirkman's job on the microfiche was phased out and she was assigned to the job of approval clerk trainee. Gillikin described the job as follows:

> An approval clerk gets a package of invoices from the supervisor and then she goes back to the files and pulls out purchase orders and the receiving reports and goes back to his or her desk and compares those three documents for vendor name. Then she compares item for item to make sure the invoice is exactly what we ordered and the price is correct and the receiving report is to make sure we received the material. . . .

[13] Brandau's comportment on the witness stand gave her the appearance of a vindictive person.

> Yes. The purchase order, receiving report, and invoice are all compared to make sure everything is the same. . . .
>
> Then she lists all the information that is needed to make the payment and to distribute the money to the proper department. She lists all this information on a key punch form that is an attachment to the invoice. . . .
>
> Bethlehem reference number is stamped on the attachment automatically. She lists the purchase order number, the buyer's code, discount rate, discount amount, the vendor's invoice date, the vendor's invoice number, the requisition number, the charge account. If it falls within certain charge accounts she has to list the way the unit of measure, the amount of money that is charged to each separate charge account, whether it's a complete bill or partial. Let's see. . . . The status code, whatever that means, whether it's an approved, unapproved or to be paid before approval, the location code. That's about all I can remember right now.

Respondent offered into evidence a performance appraisal for Kirkman dated January 29, 1980, covering the period from November 1977 to November 1979. Pierce prepared the appraisal. Kirkman was rated marginal. Among Pierce's comments were: "She is training as an approval clerk [and] appears to like this job [and] is doing better than on any other job she had performed . . . . [She] was surprised she was considered as marginal employee. She felt she was doing a good job." Gillikin, the reviewing supervisor, added "[E]mployee should not be surprised at her marginal rating, she has been informed several times." As to the quality of her work, Kirkman was rated, "Accuracy, thoroughness and effectiveness of work is adequate. Meets the basic standard for the job." Kirkman was not shown her performance appraisal. Pierce testified that while Kirkman was a vendor code clerk she was an "accurate person" and her accuracy was "good." At the time that the 1980 performance appraisal was dated, Kirkman had been an approval clerk trainee for a little over a month.

Kirkman recollected the 1980 performance appraisal. She testified that she did not ask to see, nor was she shown, the appraisal because, in her opinion, "[e]verything was favorable."

According to Kirkman, Pierce told her that she was "doing a good job." Pierce did not tell her she was marginal. Pierce did not tell her that her "attitude was not very acceptable and needed improvement" or that she did not "always get along well with others and [was] not always cooperative." Pierce told Kirkman that she seemed to be enjoying the approval clerk's job more than the vendor clerk's job.

Kirkman did not ask to see the appraisal. Nor did Kirkman ask to see her personnel file, which was permitted under a rule promulgated in 1979. Apparently, Pierce did not have the appraisal with her at the time of the interview.

Pierce's testimony indicates that she told Kirkman she was a marginal employee. Pierce related that Kirkman's:

> . . . speed and consistency was marginal, she was not able to meet the standard.[14] Her dependability to be on the job and fulfill the responsibilities, needs frequent supervision . . . . [S]he was the type of person that you had to keep after to get the job done . . . . That she did not get along with other people . . . that she was slow, that she should try a little harder and not worry so much about the job itself, and just relax and try to do the work. . . . Then the fact that she learned slow, and once she learns, she makes few errors . . . . She was satisfactory in accuracy.

According to Pierce, the performance appraisal form had been filled in before she met with Kirkman. Pierce further testified with respect to Kirkman's prospects as follows:

> I honestly felt that she was—that I was giving her the benefit of the doubt, that she was improving compared to what she had been as a vendor code clerk. . . . I told her that she was a marginal employee. If she continued to improve that status would be taken away from her on her next performance appraisal.[15]

According to Shaefer, in the latter part of January or the forepart of February 1980 Kirkman asked for a meeting with him through Gillikin. Shaefer alone met with Kirkman. Kirkman was "upset," and commenced crying. Shaefer explained, "I got up from my desk and went out to my Office Manager who sits outside my office and got a box of Kleenex or a box of tissues. . . . [I] offered them to Ms. Kirkman." Kirkman "complained . . . that she had received a marginal performance rating, and that she thought it was unfair." She indicated that "people in Accounts Payable were out to get her" but could name no one. Shaefer testified:

> I explained to her that the marginal performance rating was a serious thing; that she would have to improve that rating; but that I thought that she had the ability to improve that rating. That if she were to stay in that employment that she would eventually have to improve the performance rating, but the entire thing would be up to her to do; and it would be up to her to go back and perform her job in a manner to try to get along with people and to perform in a manner that she could change that performance rating from marginal up to satisfactory.
>
> That was the basic conversation covered in the meeting and she left my office.

Kirkman asserted that Shaefer's testimony about the above-described meeting was false. She testified that the only meeting she had with Shaefer was the one a week before the election in 1979 (around June 21), described above, in which, according to Kirkman, the Kleenex in-

[14] As noted above, Pierce's 1980 performance appraisal disclosed that Kirkman "[m]eets the basic standard for the job."

[15] I am not convinced that Pierce made all the above-stated revelations to Kirkman. Indeed, I doubt whether the performance appraisal offered into evidence was filled out on the date entered on the appraisal.

cident occurred. Shaefer denied that such a meeting occurred stating that in May 1979 he was admitted to St. Katherine's Hospital for open-heart surgery. He testified that on "Mondays and Wednesdays and Fridays through June and July [he] left [work] at noon. . . . [On] Tuesdays and Thursdays, some days [he] worked all day." Nevertheless, he attended the conference room meetings, half of which he conducted. Shaefer's testimony, other than his denial, does not exclude the probability of Kirkman's coming to his office a week before the election. Shaefer is discredited, and Kirkman is credited.

Kirkman's personnel file reveals several warning and disciplinary reports in the nature of disciplinary action. On April 17 and 28, 1972, Kirkman was ill and did not report to the supervisor. She was not paid for April 28, 1972, and was told "the next occurrence will result in three days off without pay." On July 21, 1972, by reason of excessive absenteeism in the prior 12 months, Kirkman was required to furnish a doctor's statement for "all future ill days." On September 11, 1972, Kirkman was cited for failure to report being off and was given a 3-day suspension without pay. On February 5, 1973, Kirkman was cited for absenteeism without a doctor's excuse. On May 29, 1974, Kirkman was cited for lateness and advised that "continued lateness will result in penalty time off and eventual discharge." On May 18, 1978, Kirkman was cited for failure to present a doctor's statement for illness. Kirkman refused to sign the report. Also on May 18, 1978, Kirkman was cited for failure to report being off. The report contained this comment, "We acknowledge the fact that this employee has a problem with her health, however, we feel it is still her responsibility to report [being] off at a reasonable time if she cannot work." On June 22, 1978, Kirkman was again cited for not furnishing a doctor's excuse, and, in a separate report, she was warned and penalized for failure to report being off. Except for the one noted above, all the employee warning and disciplinary reports were signed by Kirkman.

Two additional statements dated April 3 and July 10, 1979, and signed by Gillikin were apparently in Kirkman's personnel file. They were not inscribed on the printed employee warning and disciplinary form. They were in penned printing, and neither was signed by Kirkman. One, referred to above, concerned the alleged incident of Kirkman's solicitation; the other concerned a phone call which Pierce claimed she received from Kirkman. The latter report indicates that Kirkman, when queried, stated that she did not call Pierce. Pierce identified Kirkman by her voice. Kirkman denied the call. I conclude that the phone call incident was either a fabrication or that Pierce was mistaken as to the identity of the caller.

According to Pierce, after the 1980 appraisal Kirkman "just, more declined, than improved."[16]

Gillikin prepared "a chart of the 'full-time approvers' their daily totals, and their overall monthly average,"[17] herein referred to as Gillikin's computations. He described the process as follows:

> Well, on the keypunch form that the approval clerk writes there is a number and the computer totals up the number of invoices that each clerk approves each day and on our daily distribution sheet it gives me a printout of their identification number and the number of invoices they approved every day. At the end of the month I take those sheets and compile the information and come up with a total number that they approved for the month. Then I go back and add up the hours that they worked during that month and arrive at an average number of invoices per day.

Gillikin's summaries for the period Kirkman worked as an approval clerk trainee were received into evidence; however, the computer printouts for the same were not available. They are retained for only 6 months.

On Gillikin's computations, Kirkman's daily average for November 1979 was 28 approvals, her daily average for June 1980 was 36, and her highest daily average was 39. During the period of her employment as an approval clerk trainee, her daily average was always less than the daily average of any other approval clerk. The daily average output of all the employees during Kirkman's tenure as an approval clerk trainee was 47. Gillikin testified that the standard was 45. For the period worked, Kirkman's daily average was 35. Gillikin testified that normally an employee ought to reach the 45 figure in about 3 months. Gillikin said that he spoke to Kirkman on several occasions about her inability to reach the standard. She responded that she would "try harder."

Pamela Rae Raupach, an accounts payable approval clerk, trained Kirkman to do buyers' code error listing as a "back up" when Raupach went on vacation. Thereafter, Kirkman did the buyer's code error listing for January, March, and April 1980. Raupach reported to Pierce that Kirkman "was taking too long of a time . . . to do the buyers' code error listing and that she [complained] that the job was dull and boring." Pierce testified that "it took [Kirkman] longer than normal [to do the buyers' code error listing] but she didn't do it wrong."

Kirkman testified that she had intended to reactivate the union campaign when she returned from vacation in July 1980. She testified, "Most everybody in the office knew it too." Kirkman had talked to several employees about the Union in June 1980. Around June 1, Gillikin came to Kirkman's desk in regard to the buyers' code error listing. During the conversation, Kirkman remarked, "Tom, my year is almost up and I really think the union has a chance of getting in this time." Gillikin replied, "The union was never going to get in there." Gillikin denied the conversation. Gillikin's denial is not credited.

Kirkman discovered in June 1980 that employee Sheryl Echterling had been given a vacation week which was one of Kirkman's "priority weeks." Kirkman went to Gillikin and "asked why was Sheryl given one of the weeks [she] had asked for the beginning of the year [1980], [she] had more seniority and that is the way vaca-

[16] Kirkman's average number of invoices approved increased according to Gillikin's computations.

[17] Excerpt from Resp. br., p. 51.

tions were supposed to be given." Gillikin's answer was "because he wanted to." Kirkman returned to her desk and about 20 minutes later returned to Gillikin's office and asked him if she could see Shaefer "because of [her] vacation, it was unfair and unjust." Gillikin answered that Shaefer was on vacation. Kirkman asked for Steeves. Gillikin said he would arrange it. Kirkman replied that, if she saw Steeves beforehand, she would mention her vacation complaint. Gillikin told her she "had better keep [her] mouth shut" and not "say anything to Charlie." About 15 minutes later Gillikin came to Kirkman's desk and said he was going to work it out. Toward the end of the month Kirkman returned to Gillikin's office. Her vacation had apparently been worked out except that Kirkman was requested to add a "day over" at the beginning or the end of the vacation period, all of which she was to take together. This was not her preference. Later, she advised Gillikin that she would take the extra day early, commenting, "If we had a union in there would be no argument about that, I guarantee you that." Gillikin replied, "We don't have a union, we are not going to have one. If that was my way of thinking, there was no place for me at the main office."

With respect to the vacation incident, Gillikin generally agreed with Kirkman's testimony except that he testified that he had not forced her to take the extra day, nor had he told her to keep her mouth shut, nor had he made the statements about the Union attributed to him.

Gillikin fixed the conversations as of late May or early June. At that time, according to Gillikin, Kirkman's separation from employment had not been discussed. Kirkman is credited.

Gillikin testified that he could not "pinpoint" one specific instance in 1980 when Kirkman was having difficulty getting along with other employees, nor could he recall a "specific instance" in 1979.

In April 1980, Respondent released a new policy on progressive discipline signed by Shaefer. With regard to "poor work" it provided:

> POOR WORK
>
> Definition: Poor work is the failure to perform assigned work to standard. Incidents of poor work will result in the following penalties:
>
> | *Occurrence* | *Penalty* |
> |---|---|
> | 1st | Verbal Warning |
> | 2nd | Written Warning |
> | 3rd | One (1) penalty day |
> | 4th | Three (3) penalty days |
> | 5th | Five (5) penalty days |
> | 6th | Discharge |
>
> Incidents of poor work which occurred more than two years prior to the current infraction will not be considered for progressive discipline.

Gillikin was asked why this procedure was not followed in Kirkman's case. He answered, "Because this was not a disciplinary action . . . This was caused by a forced reduction and a change in procedure."[18] Upon further questioning, Gillikin reiterated that the "[r]eduction in force was the reason for [Kirkman's] termination," and acknowledged that she "probably" would not have been terminated had there been no reduction in force.

Gillikin was asked:

> What particular thing was she not doing right or failing to do or doing wrong that created this phrase you have of marginal performance?

He responded:

> We rate our employees on a performance appraisal. The items listed on that performance appraisal are the items that determine whether she is very good, satisfactory, marginal, and I can quote the things that are on that performance appraisal if you like.[19]

Shaefer testified that in early June 1980 he called the division chiefs into his office and discussed "the fall off in production and the excessive people that we had." He "instructed them to go back and look at their divisions with the work load that they have and report back to [him] if they could possibly reduce their force in any way that they could."

According to Shaefer, a few days later Gillikin reported that, "because of the drop off in the number of invoices" he was handling, he thought he could reduce his force by three employees. They discussed "whether we should have a layoff or whether we would go some other route." Gillikin "recommended that rather than lay off or terminate the three people with the least amount of seniority, that we discharge[20] or in some manner terminate three marginal employees." Gillikin wanted to "keep his good people." Gillikin was instructed to review his employees and, if he could "illustrate" that he had "three employees that were clearly worse than the rest of his employees, that we could possibly go with the method which he suggested."

According to Shaefer, Gillikin returned to his office 2 or 3 days later—"it may have been the first part of July." Gillikin indicated that he had reviewed all the files with Brandau and Pierce and received their recommendations. He recommended that Kirkman, Echterling, and Donna Wellman be terminated; "they were all rated marginal [and] they were the three worst employees." Shaefer advised Gillikin that he would make the proposal to, and seek advice from, the "personnel people." Thereafter, Shaefer called Don Titus, the manager of personnel affairs for the accounting department, in Beth-

[18] Gillikin testified before the Indiana Employment Security Division, as noted above:

> Because this person we felt had such an overall record of being undependable, and her job attitude and effectiveness working with other people, we discharged her without following these rules.

[19] Except for about a 1-month period Kirkman had not been given a performance appraisal while she worked as an approval clerk trainee.

[20] Gillikin testified that the employment office "advised that we discharge them rather that lay them off."

lehem, Pennsylvania, and, among other things, said, "[W]e would like to permanently reduce our force in Accounts Payable by three employees by way of discharge." Titus agreed with the procedure and indicated that Shaefer, as a matter of courtesy, should check with the plant personnel services department. Shaefer "relayed the story" to R. C. Bricker. Bricker also agreed with Shaefer's approach. As testified by Shaefer, "[I]t was then my decision to make as to what procedure I was going to follow, who I was going to terminate." Shaefer then advised Gillikin that Kirkman, Echterling, and Wellman were to be terminated. Although Shaefer knew that Kirkman was on vacation, he discharged her anyway explaining:

> I felt at that time that we were going to reduce our force by three employees, and for morale purposes, primarily that all three should be discharged at the same time, on the same day.

At the time Kirkman was discharged, according to Shaefer, employees were laid off in his department in the "recording" and the manifesting divisions. The three in accounts payable were the only employees discharged. Shaefer explained:

> But the reason the discharge was used in accounts payable was not only the reduction in operation of the plant but also that was the only division that we expected to have a permanent reduction in force . . . because of some procedural changes that were going to take place.

Kirkman testified that, after she was assigned to the job of approval clerk trainee, Pierce said she was "pleased with her work, [she] was doing well." This statement was made more than once. It was also made during Kirkman's performance evaluation. At her evaluation Pierce told her that Gillikin and Brandau were "pleased" with her work.

Shortly after Kirkman commenced working as an approval clerk trainee, Kirkman met Brandau in the hall. Kirkman testified, "We are talking and I told her how it really, it was interesting, a different kind of work, I was enjoying it. And she said good. She said I was doing well." Kirkman also testified, "[T]he reason I was given the microfische [sic] was that Sally Brandau said I was accurate and careful."

Gillikin testified as to why Kirkman was chosen for the microfiche:

> The main reason was we felt working on the microfiche she would only have contact with one person. This would eliminate a lot of problems, her having no contact with mill offices and purchasing. If she couldn't get along with people we put her in a job where she didn't have to.

Gillikin testified that in 1979 there were no instances of Kirkman's having problems with "mill people" nor any instance of discord in 1980. Kirkman testified that she had never been reprimanded because she did not get along or caused problems with other employees.

Gillikin asserted that a standard of 45 approvals per day had been set for approval clerks. Kirkman testified that she had never heard of the 45 approvals standard; approval clerk Raupach also testified that no particular number of approvals was stated. She said the approval clerk was expected to do as many approvals "as we can."

When Gillikin was asked why he tolerated Kirkman's alleged misconduct for so many years, he answered:

> I guess I would have to say Bethlehem is probably one of the most lenient companies I know of. This is the first person I ever discharged. I can't tell you why it wasn't done on many occasions. We discussed it. We try to rehabilitate people rather than discharge them. When we find it impossible, there is nothing left to do.

According to Shaefer, the 1980 layoffs were "based on primarily seniority within the work group." Had such policy been applied in the accounting department, Kirkman would not have been laid off. Shaefer testified:

> If the employee is just laid off, when they start to call people back in the plant, it might be—it could be but not 100 percent, it could be that that employee could even be called back to some other department based on seniority . . . some other department other than Accounting . . . [a]nd it's a possibility that they may be called back to Accounting, but with a different division within the Accounting Department.

Recall is wholly within the jurisdiction of the personnel department. Shaefer does not handle it. The personnel department supplies employees for the employment needs of the various departments. Had Kirkman been laid off, she would have been subject to recall, and thus a union partisan might have been returned to the accounting department.

Kirkman's discharge was effective July 10, 1980. She was on vacation from July 3–9, 1980. Her last day worked was July 2, 1980. Gillikin's computations show that Kirkman approved 21 vouchers on July 3; 14 on July 7; 2 on July 8; 2 on July 9; 4 on July 14; 1 on July 18; and 1 on July 25.

Kirkman had been given a merit increase on November 4, 1973. At the time of her discharge Kirkman was rated as a receiving clerk-posting with a biweekly wage of $802. Had she been advanced to approval clerk, it would have constituted a promotion.

D. *Conclusions*

1. The alleged 8(a)(1) violations

Gillikin's remarks to Kirkman threatening a reprisal, to wit, that if Kirkman favored the Union there was "no place" in the "main office" for her, was in violation of Section 8(a)(1) of the Act.

2. The discharge of Freda J. Kirkman

The General Counsel must meet the burden of proof set forth in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). To meet this burden, the General Counsel has offered evidence that (1) Respondent knew that Kirkman was a leading union pusher in the accounting department during the 1979 union election campaign; (2) Respondent not only knew that Kirkman was not a passive union advocate, but also issued instructions that her union activities be watched and that she be photographed at the plant gate while engaging in such activities; (3) Respondent knew and had been advised that in 1980 Kirkman was giving thought to the reinstitution of a union drive after she returned from her vacation in July; (4) Respondent threatened Kirkman shortly prior to her vacation in July 1980 that there was no place for her in the main office if she favored a union; (5) Respondent, during the election campaign, had expressed antipathy against Kirkman because of her union affection; (6) Respondent was actively opposed to the Union, it had engaged in an aggressive campaign bordering on unfair labor practices,[21] and it had assembled captive audiences of employees and had expended much time and major efforts to defeat the Union, which it accomplished; (7) Respondent discharged Kirkman for alleged poor work in contradiction to its rules of progressive discipline on the subject; (8) Respondent discharged Kirkman while she was on vacation, which did not conform with its usual practice; (9) Respondent issued no warnings to Kirkman that she would be discharged for poor work and led her to believe that her work was satisfactory; (10) Respondent did not give Kirkman an opportunity to resign rather than be discharged as was permitted other employees who were discharged on the same day; (11) Respondent discharged Kirkman at a time when it was ripe for the commencement of a renewed union election campaign and at which time her discharge would have had a substantial discouraging effect on union organizational activities; and (12) Brandau, Kirkman's supervisor, was heard to comment that Kirkman had been discharged for her union activities. Accordingly, the evidence offered by the General Counsel establishes a *prima facie* case within the teachings of *Wright Line* that a motivating factor for Respondent's discharge of Kirkman was to discourage union activities.[22]

Having concluded that the General Counsel has made a *prima facie* case under the teachings of *Wright Line, supra*, I turn to Respondent's burden of showing that it would have discharged Kirkman in the absence of the protected conduct.

Respondent asserts that Kirkman's discharge was the result of a reduction in force caused by a decline in production at the mill and certain changes in office procedures which decreased the number of invoices processed. In fact, Gillikin testified that had not such events occurred Kirkman would not have been discharged. Faced with a reduction in force, which Respondent claims was a permanent reduction in force, Respondent chose Kirkman for separation from employment allegedly because she was rated as a marginal employee and Gillikin wanted to keep "his good people" rather than follow seniority. Kirkman was claimed to be one of the three "worst" employees. According to Shaefer, "For morale purposes" Kirkman was discharged with the other two dischargees even though she was on vacation. Albeit progressive discipline was in effect governing disciplinary action for poor work, those rules were willfully ignored in Kirkman's case. Gillikin fobbed off this omission by first testifying (in the Indiana Employment Security Division hearing), "Because this person we felt had such an overall record of being undependable, and her job attitude and effectiveness working with the other people, we discharged her without following these rules." In this proceeding, Gillikin shifted Respondent's position with testimony that appeared to be more compatible with Respondent's defense herein, to wit: "Because this was not a disciplinary action . . . . This was caused by a forced reduction and a change in procedure."[23] A reduction in force and a change in procedures were not mentioned by Gillikin in the IESD hearing, but surfaced for the first time as a part of Respondent's defense in this proceeding. Thus, it seems obvious that it was drawn upon by Respondent to shore up its specious reasons for discharging a union partisan at a time when a union election campaign was becoming imminent. Patently, this explanation was offered in justification of its action. The late raising of this issue bespeaks of Respondent's ulterior motive. Moreover, had Respondent applied its progressive rules with respect to disciplinary action for poor work, it could not have discharged Kirkman for poor work,[24] as it claimed it did, until the union election campaign was well under way or perhaps completed. Thus, seemingly its purpose to discourage union activity would have

[21] The photographing of Kirkman at the plant gate engaging in union activities was, in fact, an unfair labor practice. See *United States Steel Corporation*, 255 NLRB 1338 (1981); *Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62* v. *N.L.R.B.*, 640 F.2d 1094 (9th Cir. 1981).

[22] "Once this is established, the burden will shift to [Respondent] to demonstrate that the same action would have taken place even in the absence of the protected conduct." *Wright Line, supra* at 1089.

[23] It is obvious that before the IESD Gillikin had insisted that Kirkman's discharge was for disciplinary reasons. This ploy was lost before the appeals referee, who found on October 31, 1980:

> It is concluded the claimant was not issued any warnings concerning her work performance. It is concluded that the employer did not uniformly enforce its policy for progressive discipline. Therefore, it is concluded the claimant was discharged from her employment but not for just cause.

Thus, if the Board independently made a like finding, Respondent, if it expected to prevail before the Board, would probably have had to come up with a different defense since Kirkman's discharge was without just cause. This may account for Gillikin's change in testimony in this proceeding and the claim that Kirkman would not have been discharged except for a reduction in force. According to Shaefer, Gillikin "just did not know what to say" before the IESD. The inference is that Gillikin's deficiency was corrected in this proceeding. Shaefer testified:

> It was immediately after the hearing and Mr. Gillikin came to my office extremely upset as to what had taken place at the hearing. He was very nervous, very upset, over the fact that we did not have a lawyer present at the meeting and that Ms. Kirkman did have a lawyer present, that he had been totally unprepared as to what would take place at the hearing and, to emphasize again, extremely nervous and extremely upset over the fact that he was completely unprepared for the hearing. He just did not know what to say.

[24] In its first response to the IESD on July 29, 1980, Respondent cited the reason for Kirkman's discharge as "poor work, poor attitude, and insubordination."

lacked fruition, just as its message would have been less puissant had Kirkman not been fired while on vacation or laid off instead of being discharged. Respondent acted in such a manner so that no employee in the accounts payable department would conclude otherwise than that Kirkman's discharge posed a threat for each union partisan.

Since Kirkman's last warning had been received on June 21, 1978 (the warning was not for "carelessness or poor work"), more than 2 years before her discharge, before she could have been discharged under Respondent's progressive rules Kirkman was entitled to first, a verbal warning; second, a written warning; third, 1 penalty day; fourth, 3 penalty days; and fifth, 5 penalty days. If poor work was a reason for Kirkman's discharge, Respondent has advanced no valid reason (even if it is assumed that there was a decline in business and procedures were to be changed in the future) why Respondent could not have delayed her discharge to accommodate the rule. Moreover, if her work was of such a character as to justify discharge, there was no credible reason advanced by Respondent for failing to warn her or give her the penalty days provided under the rule.

With regard to her work record, Respondent seems to have resurrected every incident of her 10 years of employment that may be construed in its favor to bolster up its insistence that she was a marginal employee. It relied on factors which no longer related to her approval clerk trainee job, such as her failure to get along with others as a file clerk or microfiche operator. It did not target alone on the job she had been filling since October 1979, that of approval clerk trainee. In that job she had never been told she was an unsatisfactory employee. In fact, the indications to her by her supervisors were that her work was satisfactory. As observed by Pierce in reference to the approval clerk job, Kirkman "appears to like the job [and] *is doing better than any other job she had performed.*" (Emphasis supplied.) While Gillikin dwelled on the idea that Kirkman had not reached the alleged standard of processing 45 invoices a day, the credited evidence is that no such standard existed, nor was such a standard even communicated to Kirkman. Moreover, that Respondent placed much emphasis on Kirkman's inability as a trainee to reach the standard is countervailed by the fact that Echterling, who was also rated marginal, was the third highest producer of the approval clerks according to Gillikin's computations. Palpably, production was accorded little weight as incorporated in the classification of marginal. Moreover, in Pierce's 1980 performance appraisal, she stated that Kirkman "meets basic standard for job." Indeed, Gillikin's computations are of dubious probative weight. In the first place, the computations were secondary evidence compiled by Gillikin from alleged computer printouts which were not retained after 6 months. Thus, the best evidence was not available. Additionally, it appears that Respondent was put on notice that the computer printouts might be pertinent to this hearing when Kirkman filed unfair labor practice charges on July 21, 1980. On July 16, 1980, Kirkman also filed a claim with the IESD, and on August 13, 1980, Respondent filed a statement with that division. Thus, when Respondent was called upon to respond to claims that it wrongfully discharged Kirkman, it had seemingly in its possession computer printouts for the past 6 months which would have contained Kirkman's production records from February through July. These records would have been a fair sample of her work as an approval clerk. Hence, the nonretention of the printouts becomes suspect. Moreover, Gillikin's computations indicate that Kirkman processed invoices when she was absent from work. Since Kirkman's testimony is that her production record was not as low as shown on Gillikin's computations, the inference is that the computations may have been rigged to favor Respondent's position in these proceedings.

In this regard Respondent's evidence indicates that in April 1980 one of the two blast furnaces at the Burns Harbor plant went down for a reline. As a result there was a decline in production. The total net tons produced fell in 1980 from 246,678 in April to a low of 186,691 in August. By October 1980 production had reached 339,569 net tons. In April 1980 certain procedural changes were, according to Shaefer, in the "discussion stages at that time."

The number of invoices submitted by vendors for the months from April to November 1980 were as follows:

Month	*Number of Invoices*
April	14,328
May	12,102
June	10,383
July	9,565
August	8,457
September	9,265
October	11,845
November	10,484

The drop in the number of invoices over this period was the result of a lessening of production and not from the adoption of new procedures. Apparently that occurred later. When Gillikin was asked the percentage of work which was affected by the new procedures (which involved the elimination of approving invoices under $500), he testified:

> I can't remember the percentage now. I do have them at work. It seems to me like I believe it was 40 percent of the invoices were under $500. I'm not sure that's right but. . . .

According to Gillikin's computations, the total number of invoices processed by the full-time approval clerks during the period Kirkman (as well as Echterling) was an approval clerk trainee was as follows:

October 1979—5,848	March 1980—5,739
November 1979—5,369	April 1980—5,110
December 1979—5,682	May 1980—5,048
January 1980—5,200	June 1980—4,099
February 1980—4,801	July 1980—3,758

If Gillikin's computations are accurate, when the invoices fell to 8,457 in August 1980, which was their lowest point, even with Kirkman and Echterling on the payroll, the 8,457 invoices could not have been processed by the full-time approval clerks because the number of invoices last processed when Kirkman and Echterling were on the payroll was 4,099; the greatest number during such period was 5,739. Moreover, had there been a 40-percent reduction in November 1980 due to new procedures, the number of invoices to be processed would have been 6,290,[25] which is still greater than the number of invoices processed in any month when Kirkman and Echterling were on the payroll. Thus, it must be concluded that Gillikin's computations were either unreliable, or that work was available for Kirkman when she was discharged and Shaefer's claim that he was prompted in discharging Kirkman because of the necessity to reduce the force because of lack of work was a pretext seized upon to get rid of a union partisan in the accounting department. From the credited evidence it is also apparent that Respondent took care of its backlog of invoices, which must have occurred if Gillikin's computations are correct, by utilizing employees such as Bill Shuster, who came from another division of accounting as a temporary replacement, and Elizabeth Misch, who had approved on a part-time basis.

Hence, it would appear that, if the above reasoning is followed, Respondent's claim in its brief that Shaefer's decision to discharge Kirkman was "based on two factors—one, the level of invoices, and, two, the changes to the accounts payable procedures"—is not well taken. And such, as a "legitimate business reason," is a pure pretext.[26] In this aspect Kirkman's work record becomes immaterial since it is admitted that she would not have been discharged except for the reduction in force.

In sum, Respondent has shown neither that Kirkman's work record was such that it justified her discharge nor that the reduction in force and change in procedure was of such an urgent nature as to require the precipitious discharge of Kirkman at a time when a union election campaign could have been activated. On the latter point, Shaefer must have held his tongue in cheek when he said that Kirkman was discharged while on vacation for "morale" purposes. The inference is more likely that she was discharged while on vacation so that the chance that the discouraging effect of her discharge might not be muted by her accepting a resignation instead of a discharge and so that Respondent could avoid a confrontation with Kirkman which might have disclosed the real reason for her discharge. Ostensibly, discharge rather than layoff was chosen so that there was no probability that Kirkman, a union partisan, would be recalled by personnel either in the accounting department or another division of Respondent.

Accordingly, I conclude that Kirkman was not discharged for cause within the meaning of the Act, but that she was discharged for the purpose of discouraging membership in a labor organization, and that Respondent has not demonstrated that Kirkman would have been discharged even in the absence of her union activities. It is found that Respondent, by discharging Kirkman, violated Section 8(a)(1) and (3) of the Act. Kirkman would not have been discharged on July 9, 1980, except for her protected activity.

Respondent must have known that the discharge of Kirkman, an employee of 10 years' standing and a known leading union advocate, while she was on vacation and at the time when a union election campaign was in the offing would discourage membership in the Union. Such conduct clearly carried "with it an inference of unlawful intention so compelling that it is justifiable to disbelieve [Respondent's] protestations of innocent purpose." See *American Ship Building Co.* v. *N.L.R.B.*, 380 U.S. 300, 311-312 (1965). See also *The Radio Officers' Union of the Commercial Telegraphers Union, AFL [A. H. Bull Steamship Company]* v. *N.L.R.B.*, 347 U.S. 17, 45 (1954). Since Respondent's "motive was clearly unlawful its asserted reasons for the discharge of [Kirkman] become immaterial for the mere existence of an alternate ground for action taken is no defense where, as here, [Respondent's] actual motivation is based on unlawful discrimination." *Joseph Horne Co.*, 186 NLRB 754, 762 (1970). "[T]he existence of a proper reason for a discharge is no defense if the discharge was actually made for an improper purpose." *The John Klann Moving and Trucking Company* v. *N.L.R.B.*, 411 F.2d 261, 263 (6th Cir. 1969).

Respondent's explanation was not worthy of credence. Kirkman's discharge was the fulfillment of Respondent's unlawful threat that if she continued her union affection there was no place for her in the main office. Moreover, there is a strong inference that Echterling and Wellman were victims of Respondent's unlawful discrimination against Kirkman. Cf. *Rock Tenn Company, Corrugated Division*, 234 NLRB 823 (1978); *Majestic Molded Products, Inc. and Lucky Wish Products, Inc.* v. *N.L.R.B.*, 330 F.2d 603 (2d Cir. 1964).

3. The "pool incident"

Yet to be considered is the resolution of the credibility of the witnesses as it relates to the pool incident.

The veracity of Newman, Brandau, and Pierce must be resolved since the proof is not that it would have been physically impossible for the alleged poolside conversation to have been overheard by Newman. In this regard there are certain incidents which reflect adversely on the credibility of Newman. Newman harbored an arrogant, antagonistic, get-even attitude toward Respondent and a special dislike for Brandau. He failed to relate the alleged conversation to the Board's agent when he had an opportunity, and delayed a written transmission of the affair for several months after it is alleged to have occurred. While his failure to disclose the incident to the Board's agent may have been reasonably explained, Kirkman's omission of the poolside conversation in her many

[25] The credited evidence does not reveal that the new procedures were put into effect by November 1980.

[26] In the recent case of *Heartland Food Warehouse, Division of Purity Supreme Supermarkets*, 256 NLRB 940, 941 (1981), the Board said:

> The Administrative Law Judge was therefore correct in finding that where, as here, the respondent's stated motives for discharge are discredited, it may be inferred that the true motive for discharge is an unlawful one which [the] respondent seeks to disguise.

statements to the Board raises a strong inference that Newman had not revealed the full details of the conversation to her until he sent her his affidavit. However, it may be reasoned that a written transmittal to the Board's agent was superfluous since Kirkman apparently had already advised him verbally, for he did inquire of Newman if he knew the reason for Kirkman's discharge. Nevertheless, Newman's demeanor, both as a witness on direct examination and on rebuttal, portrayed no semblance of an untruthful witnesses.

On the other hand, when reference was made to the Brandau conversation, Pierce, who apparently was unaccustomed to dissembling, behaved in a discernibly subreptitious manner. From her demeanor it was obvious that she either had heard the conversation or was aware that Kirkman had been fired because of her affection for the Union. Brandau was a more sophisticated witness than Pierce; she gave the impression of being a disingenuous witness, for which reason her reliability became questionable.

In light of the record as a whole and the demeanor of the witnesses, I am uncertain as to whether the conversation occurred exactly as reported by Newman, but I am reasonably certain that Brandau and Pierce mentioned at poolside Kirkman's discharge for union activities in which each participated and with which each was acquainted.

One final word on credibility, in crediting Kirkman, I have considered her self-interest as a charging party-discriminatee; on the other hand, I am not unaware of Respondent's self-interest and that of its supervisor witnesses, whose testimony, if credited, would not only relieve Respondent of the charge of unfair labor practices, but also would accommodate its preference to avoid the unionizing of its clerical employees.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act for jurisdiction to be exercised herein.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By unlawfully discharging Freda J. Kirkman on July 9, 1980, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that Respondent has engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It having been found that Respondent unlawfully discharged Freda J. Kirkman on July 9, 1980, in violation of Section 8(a)(3) of the Act, it is recommended in accordance with Board policy that Respondent offer Kirkman immediate and full reinstatement to her former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, dismissing, if necessary, any employee hired on or since July 9, 1980, to fill any such position, and make her whole for any loss of earnings that she may have suffered by reason of Respondent's unlawful acts herein detailed by payment to her of a sum of money equal to the amount she would have earned from the date of her unlawful discharge to the date of valid offer of reinstatement, less net earnings during such period, to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner established by the Board in *Florida Steel Corporation*, 231 NLRB 651 (1977).[27] Additionally, because Respondent's unfair labor practices go to the very heart of the Act, a broad order requiring Respondent to cease and desist from in any other manner infringing upon the rights guaranteed its employees by Section 7 of the Act is recommended. *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F.2d 532 (4th Cir. 1941).

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[28]

The Respondent, Bethlehem Steel Corporation, Chesterton, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging union or concerted activities of its employees or membership in United Steelworkers of America, AFL–CIO, or any other labor organization, by unlawfully and discriminatorily discharging employees or discriminating against them in any other manner with respect to their hire or tenure of employment or any term or condition of employment in violation of Section 8(a)(3) and (1) of the Act.

(b) Unlawfully threatening employees that there is no place in the main office for employees who want a union in violation of Section 8(a)(1) of the Act.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended, to engage in self-organization, to form, join, or assist any union, to bargain collectively through a representative of their own choosing, to act

[27] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[28] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

together for the purpose of collective bargaining or other mutual aid or protection, or to refrain from the exercise of any and all of these things.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Offer Freda J. Kirkman immediate and full reinstatement to her former position or, if such position no longer exists, to a susbstantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, discharging, if necessary, any employee hired to replace her, and make her whole for any loss of pay she may have suffered by reason of the discrimination against her in accordance with the recommendations set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at its Burns Harbor plant copies of the attached notice marked "Appendix."[29] Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the complaint be, and it hereby is, dismissed insofar as it alleges violations of the Act other than those specifically found in this Decision.

[29] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT discourage union or concerted activities of employees or membership in United Steel Workers of America, AFL-CIO, or any other labor organization, by unlawfully and discriminatorily discharging employees or discriminating against them in any other manner with respect to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT unlawfully threaten employees that there is no place in the main office for employees who want a union.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer Freda J. Kirkman immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent job, discharging, if necessary, any employee hired to replace her; WE WILL restore her seniority and other rights and privileges previously enjoyed; and WE WILL pay her the backpay she lost because we discriminatorily discharged her, with interest.

All our employees are free to become or remain, or refrain from becoming or remaining, members of a labor organization.

BETHLEHEM STEEL CORPORATION